



**US Army Corps
of Engineers®**
Headquarters

Corps Facts

Date: Mar. 6, 2000

SUBJECT: Background of Nationwide Permits

The Army Corps of Engineers (Corps) is issuing 5 new Nationwide Permits (NWP) and modifying 6 existing NWPs to replace NWP 26 which expires on June 5, 2000. The Corps is also modifying nine NWP general conditions and adding two new NWP general conditions. The new NWP general conditions will increase protection of designated critical resource waters and waters of the United States within 100-year floodplains.

Replacing NWP 26

In December 1996, the Corps decided to replace NWP 26, which authorizes discharges of dredged or fill material into headwaters and isolated waters of the United States, with activity-specific NWPs. The new and modified NWPs authorize many of the same activities that NWP 26 authorized, but they are activity-specific, with terms and conditions to ensure that these activities result in minimal adverse effects on the aquatic environment.

The new and modified NWPs will substantially increase protection of the aquatic environment, while authorizing activities with minimal environmentally adverse effects. The maximum acreage limits of most of the new and modified NWPs is one-half acre. Most require notification to the Corps district engineer for activities that result in the loss of greater than one-tenth acre of waters of the United States.

The terms and conditions of the new and modified NWPs are intended to authorize activities that have minimal adverse effects on the aquatic environment, individually and cumulatively. Most of the new NWPs authorize activities in non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters. The acreage limit for most of the new and modified NWPs is one-half acre. For the new and modified NWPs, the Corps has established pre-construction notification (PCN) thresholds to ensure that any activity that may have more than minimal adverse effects on the aquatic environment is reviewed by a district engineer on a case-by-case basis. Most of the new NWPs require submission of a PCN for discharges of dredged or fill material resulting in the loss of greater than one-tenth acre of waters of the United States. Regional conditions may be added to the NWPs by division engineers to lower notification thresholds.

The new and modified NWPs, issued this week, will become effective in June 2000. This week's *Federal Register* notice begins the 90-day Clean Water Act Section 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination processes. Because of the changes, including the general conditions, we

have increased the normal 60-day WQC and CZMA consistency determination processes to 90 days. During this 90-day period, Corps divisions and districts will finalize their regional conditions for the new and modified NWP.

After considering the comments received in response to the July 21, 1999, *Federal Register* notice, we made several important changes to the new and modified NWP. For most, we established a half-acre limit. Notification to the district engineer will be required for most activities that result in the loss of greater than one-tenth acre of waters of the United States. For NWP 39, 40, 42 and 43, we have imposed a 300 linear foot limit for filling and excavating stream beds. We have also increased the notification review period to 45 days. We have revised nine general conditions and added two new general conditions. The new NWP general conditions limit activities in designated critical resource waters and fills in waters of the United States within 100-year floodplains. All above-grade fill under NWP 29, 39, 40, 42, 43 and 44 is prohibited within the FEMA-mapped 100-year floodplain below the headwaters of any stream. Within the headwaters, above-grade fill is prohibited within the FEMA-mapped regulatory floodway, and any above-grade fill in the flood fringe must meet FEMA standards.

23 years ago

Today's revised NWP continue a Corps of Engineers trend of enhancing the protection of the aquatic environment through the NWP program. In 1977, the predecessor to NWP 26 authorized unlimited fill in headwaters and isolated waters without any notification of the Corps. In 1984, the Corps established a maximum project specific impact limit of ten acres and a notification of the Corps for any impact greater than one acre. In 1996, we reduced these project specific limits to three acres maximum and one-third acre for notification of the Corps. To further ensure that the NWP program properly protects the aquatic environment, the Corps is conducting a Programmatic Environmental Impact Statement, which will be completed in early 2001. To ensure full protection of endangered species, the Corps is formally consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the NWP program.

All of these substantial improvements will increase costs to applicants somewhat and increase the needed Corps funding to maintain our current level of service to the public. We believe the changes are necessary to ensure the statutory requirement that general permits, including NWP, will have no more than minimal adverse effects on the aquatic environment.

Since the schedule published December 15, 1999 changed, we are extending the expiration date of NWP 26 to early June 2000. NWP 26 PCNs submitted on or before the notice is published in the *Federal Register* this week, (whether required or not) will be reviewed under the existing terms and conditions of NWP.
